Southwestern Bell Telephone Company *and* Betty G. McCullah

Communications Workers of America, AFL–CIO, and its Local 6222 *and* Betty G. McCullah. Cases 16–CA–14246 and 16–CB–3447

May 24, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

Upon a charge filed by Betty G. McCullah, the Charging Party, on October 3, 1989,[1] and another charge filed by the Charging Party on October 3, as amended on November 7, the General Counsel of the National Labor Relations Board issued a consolidated complaint on November 17 against Southwestern Bell Telephone Company, the Respondent Employer, and Communications Workers of America, AFL–CIO, and its Local 6222, the Respondent Unions, alleging that the Respondent Employer violated Section 8(a)(1), (2), and (3) and that the Respondent Unions violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act. Thereafter, the Respondents filed answers denying the commission of any unfair labor practice.

On February 1, 1990, the parties filed a stipulation of facts and a motion to transfer the case to the Board. The parties agreed that the stipulation of facts and attached exhibits shall constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties further waived a hearing before an administrative law judge, the issuance of an administrative law judge's decision, and indicated their desire to submit the case directly to the Board for findings of fact, conclusions of law, and an Order.

On September 24, 1990, the Board issued its Order approving the stipulation and transferring the proceeding to the Board. Thereafter, the General Counsel, the Respondent Employer, and the Respondent Unions filed briefs.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in the case, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent Employer, a Missouri corporation, with offices and facilities in Houston, Texas, is a communications common carrier providing telephone services and other communication services in the States of Texas, Arkansas, Oklahoma, Kansas, and Missouri. During the 12 months preceding the execution of the stipulation of facts, a representative period, the Respondent Employer, in the course and conduct of its business operations, received gross revenues in excess of $100,000 for services which it performed in the State of Texas. We find that the Respondent Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Respondent Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The issues presented are whether the Respondent Employer violated Section 8(a)(1), (2), and (3) and the Respondent Unions violated Section 8(b)(1)(A) and (2) by refusing to honor the Charging Party's request to revoke her previously executed dues-checkoff authorization after she had resigned her union membership.

A. *Facts*

The Respondent Unions, by virtue of Section 9(a) of the Act, are the exclusive collective-bargaining representatives of certain employees of the Respondent Employer, including the Charging Party. The Respondent Employer and the Respondent Union Communications Workers have been parties to successive collective-bargaining agreements, the most recent of which is effective August 13, 1989, through August 8, 1992. Respondent Union Local 6222 administers, in part, the contracts described above and typically handles grievances through the step two level of the grievance and arbitration procedure under these contracts. The predecessor contract effective August 10, 1986, through August 12, 1989, contains the relevant revocation ''window period'' pertinent to this proceeding. The agreements did not contain any applicable union-security provision,[3] but provided that the employees could authorize the Respondent Employer to deduct regular monthly union dues from their wages and remit them

[1] All dates are in 1989 unless otherwise indicated.

[2] On December 17, 1990, the Respondent Unions filed with the Board a letter directing the Board's attention to a recently released memorandum from the General Counsel's Division of Advice in another proceeding, which they contend supports their position. The Respondent Unions' submission contained a copy of the advice memorandum. On December 21, 1990, the General Counsel filed a motion to strike the Respondent Unions' submission on the grounds that it was untimely, and thereafter the Respondent Unions filed a response to the General Counsel's motion. Although the Respondent Unions' submission does not technically comply with Sec. 102.46 of the Board's Rules and Regulations, we find that it need not be excluded as a late-filed brief inasmuch as it contains no argument. See *Downtowner Motor Inn*, 262 NLRB 1058 (1982).

[3] The parties' bargaining agreements are applicable to employees employed in the several States where the Respondent Employer does business. They contain a union-security provision applicable only ''where permitted by law.'' We take note that the Respondent Employer's operation in Houston, Texas, is subject to Texas ''right-to-work'' statutes prohibiting union-security provisions as a condition of employment. We also note that no party contends that the contractual union-security provision is applicable to the Charging Party and, indeed, the parties stipulated that the agreements contain no provision mandating that the Charging Party must be a member and pay dues.

to Respondent Union Communications Workers.[4] Dues-checkoff authorizations, which may be revoked, are used by the Respondent Unions to collect monthly deductions from the employees of the Respondent Employer. Expectancy of compliance with the revocation provisions contained in the authorization agreements permits the Respondent Unions to project income and budget expenses and aids them in performing their representation functions; it also assures a significant degree of economic stability.

On October 3, 1979, the Charging Party executed a checkoff-authorization agreement[5] which authorized the Respondent Employer to deduct twice each month from her pay an amount equal to one half of the regular monthly union dues and to pay the amount so deducted to the order of the treasurer of Respondent Communications Workers.

On or about September 7, 1989, the Charging Party notified the Respondent Employer by letter that she was resigning from the Respondent Unions and requested that the Respondent Employer cease deducting union dues from her payroll, effective with the payroll period ending October 7. On or about September 7, the Charging Party notified the Respondent Unions by letters that she was resigning from the Respondent Unions' membership, effective October 7. On or about September 8, the Respondent Employer notified the Charging Party by letter that the Respondent Employer was refusing to honor the Charging Party's request. The Respondent Unions granted the Charging Party's request to strike the Charging Party's name from their membership roll, effective October 7, but since on or about October 7, the Respondent Unions have refused, and continue to refuse, to honor Charging Party's request to cancel her checkoff-authorization agreement.

As set forth above, article XXIII, section 2 of the collective-bargaining agreement provides that the dues-checkoff authorization is not revocable except during the 14-day period immediately preceding each anniversary date of the agreement. The applicable escape period for 1989 was the 14-day period beginning July 30 through August 12, inclusive. The Respondent Unions have made no request affecting the Charging Party's employment status as the collective-bargaining agreements contain no provision mandating that the Charging Party be a union member and pay union dues.

B. *Contentions of the Parties*

The General Counsel offers three alternative theories on which to base violations of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2). First, applying the principles of *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985), the General Counsel contends that the Respondents' refusal to recognize the Charging Party's revocation of her dues-checkoff authorization was an unlawful restriction on her Section 7 right to resign union membership. Second, the General Counsel urges the adoption of the view taken by former Member Johansen in *Postal Service*, 279 NLRB 40, 42 (1986), enf. denied 827 F.2d 548 (9th Cir. 1987). Under that view, the General Counsel submits that even if the request to revoke the dues-checkoff authorization was untimely, as claimed by the Respondent Unions, the resignations from membership, which the Respondent Unions accepted, reduced the dues obligation to zero. Thus, according to this theory, the Respondent Unions violated the Act by causing the Respondent Employer to deduct from the Charging Party's paychecks amounts greater than zero. Finally, the General Counsel contends that the Respondents' conduct was unlawful under the ''quid pro quo'' analysis of *Machinists*

[4] Art. XXIII of the applicable collective-bargaining agreement effective August 10, 1986, through August 12, 1989, provided in pertinent part:

> Section 1. Subject to the provisions of this Article and the provisions of the written authorizations herein referred to, the Company agrees to make collections twice each month of regular Union dues through payroll deduction from an employee's pay upon receipt of a written authorization complete in all details on Form S-9163 (Rev. 5-51, or as subsequently revised by the parties hereto) signed by the individual employee and delivered by the Union to the Company. The Company also agrees to remit the amounts so deducted to the order of the Treasurer of Communications Workers of America . . . .
>
> Section 2. Any authorization of dues deduction shall not be subject to revocation except that an employee may revoke the authorization during the period beginning fourteen (14) days prior to each anniversary date of the current Collective Bargaining Agreements. These periods are: July 26, 1987, through August 8, 1987; July 24, 1988, through August 6, 1988; July 30, 1989, through August 12, 1989; all dates inclusive . . . .
>
> Section 3. The Company shall not be required to deduct or remit any such amount or amounts where it has received notice of the claim of any employee from whom dues deductions are being made that such amount or amounts are being deducted from such employee's pay without proper authority.

[5] The checkoff-authorization form executed reads, in relevant part, as follows:

> PAYROLL ALLOTMENT AUTHORIZATION FOR
> UNION DUES OR AMOUNT EQUIVALENT
> TO UNION DUES
>
> I hereby authorize and direct Southwestern Bell Telephone Company to deduct twice each month from my pay an amount equal to one-half of the regular monthly union dues in the amount described below, subject to the terms and conditions on the reverse hereof, and to pay the amount so deducted to the order of the Treasurer of Communications Workers of America:
>
> (1) The monthly amount of $11.00 until such amount is changed in accordance with the lawfully adopted by-laws of the local described above, and advice of such change is certified to the Telephone Company by an authorized representative of Communications Workers of America, and thereafter.
>
> (2) The amount of regular monthly union dues or the percent of basic rate of pay constituting the amount of regular union dues, in accordance with said by-laws, as certified to the Telephone Company by an authorized representative of Communications Workers of America.
>
> I understand and agree that I may revoke this authorization by giving written notice to the Company by registered mail, with a copy to the Union, only during the following periods for the duration of the 1977 Collective Bargaining Agreement between the Southwestern Bell Telephone Company and the Union: July 22, 1978, through August 6, 1978; July 21, 1979, through August 4, 1979, and July 26, 1980, through August 9, 1980. I further understand that this authorization may be revoked in the manner stated above only during the periods beginning fourteen (14) days prior to the anniversary date of subsequent Collective Bargaining Agreements between the Southwestern Bell Telephone Company and the Union.

Local 2045 (Eagle Signal), 268 NLRB 635, 637 (1984), discussed below.

The Respondent Unions contend that the Charging Party voluntarily entered into the checkoff agreement providing for specified revocation periods and that the terms of the freely entered agreement are enforceable. The Respondent Unions also contend that the terms of the checkoff agreement are not amenable to an interpretation that the Charging Party owes less than the amount specified therein and that there is no public policy against enforcement of the checkoff agreement according to its terms.

The Respondent Employer contends that it lawfully complied with the revocation terms of the checkoff authorization executed by the Charging Party and that it is contractually obligated to abide by the terms of the collective-bargaining agreement. Respondent Employer contends that in interpreting a former bargaining agreement, an arbitrator has ruled that any revocation of dues-checkoff authorization could be made only within the period specified in the agreement and that the Respondent Employer has relied on that arbitral decision.

C. *Discussion*

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,[6] the Board acknowledged judicial criticism of the Eagle Signal analysis[7] and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.[8] In order to give full effect to these fundamental labor policies, the Board stated that it would:

> construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the method by which dues payments will be made *so long as dues payment are properly owing.* We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. [Id. at 328–329.][9]

Applying these principles of *Lockheed* to the stipulated facts in this case, we find that the checkoff authorization does not contain explicit language clearly setting forth an obligation by the Charging Party to pay dues after her resignation from union membership. All that the Charging Party clearly authorized was the deduction of an amount equal to a portion of the ''regular monthly union dues.'' She did not clearly authorize the continuation of this deduction after she had submitted her resignation from union membership. We thus find that the wage assignment made by the Charging Party was conditioned on her union membership and was revoked when she ceased her union membership. We, therefore, find that the Respondent Employer's refusal to discontinue payroll deductions of union dues for the Charging Party was unlawful assistance to a labor organization and restrained and coerced employees in the exercise of their Section 7 rights.[10] Accordingly, we find that the Respondent Employer violated Section 8(a)(1), (2), and (3) of the Act. We further conclude that the Respondent Union's refusal to accept the Charging Party's revocation request restrained and coerced employees in the exercise of their Section 7 rights. Accordingly, we find that the Respondent Unions violated Section 8(b)(1)(A) of the Act.[11]

CONCLUSIONS OF LAW

1. By refusing to honor the revocation of dues-checkoff authorization previously executed by Betty G. McCullah after she resigned membership in the Union, where the terms of the voluntarily executed checkoff authorization did not clearly and explicitly impose any

[6] 302 NLRB 322 (1991).

[7] See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

[8] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

[9] In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security provision. In the absence of a union-security clause requiring union membership here, the *Lockheed* test is applicable to this case.

[10] We find no merit to the Respondent Employer's contention that it did not violate the Act because it relied on an arbitral decision interpreting the contractual checkoff provision. The decision concerned the effect of a contractual hiatus period on the viability of dues-checkoff authorizations and did not expressly concern the effect of a resignation of union membership. The arbitrator sustained the Union's grievance that the Respondent was obligated to continue the deduction of dues. The Respondent Employer does not contend that the Board should defer to the arbitration award, only that its reliance on the award constitutes a defense. Inasmuch as the award did not purport to consider the issue presented herein, nor does it apply the principles of *Lockheed Space*, we find that the Respondent's reliance on the award does not constitute a defense to the allegations of the complaint.

[11] The stipulated record contains no evidence that the Respondent Unions took any affirmative steps to cause or require the Respondent Employer to continue to deduct the Charging Party's dues after her resignation. Accordingly, we shall dismiss the complaint insofar as it alleges that the Respondent Unions violated Sec. 8(b)(2) in this respect.

postresignation dues obligation on her, the Respondent Unions have restrained and coerced employees in the exercise of their Section 7 rights and have violated Section 8(b)(1)(A) of the Act.

2. By refusing to discontinue dues deductions from the wages of Betty G. McCullah after she ceased being a union member and had requested that the Respondents cancel her checkoff authorizations, the Respondent Employer has unlawfully assisted Respondent Unions and has restrained and coerced employees in the excercise of their Section 7 rights, thereby violating Section 8(a)(1), (2), and (3) of the Act.

REMEDY

Having found that the Respondents have engaged in the unfair labor practices described above, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents must give full force and effect to the Charging Party's revocation of her checkoff authorization. In addition, the Respondents jointly and severally shall make employee McCullah whole for any moneys deducted from her wages for the period following her union membership resignation, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that

A. Respondent Southwestern Bell Telephone Company, Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to honor revocation of dues-checkoff authorizations after employees have resigned membership in the Union, where the terms of the executed checkoff authorizations do not clearly and explicitly impose any postresignation dues obligation on the employees and where there is no valid union-security clause in effect.

(b) Deducting, by virtue of dues-checkoff authorizations that do not clearly and explicitly impose any postresignation dues obligation on the employees, union membership dues from the wages of employees who have resigned their union membership.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole, jointly and severally with Communications Workers of America, AFL–CIO, and its Local 6222 employee Betty G. McCullah for any dues deductions from her wages for the period following her resignation from union membership, with interest as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facilities in Houston, Texas, copies of the attached notice marked ''Appendix A.''[12] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in paragraph A,2,(c), above, as soon as forwarded by the Regional Director, copies of the attached notice marked ''Appendix B.''

(e) Mail signed copies of the attached notice marked ''Appendix A'' to the Regional Director for posting by the Respondent Unions.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Employer has taken to comply.

B. Respondents Communications Workers of America, AFL–CIO, and its Local 6222, Houston, Texas, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to honor any employee's revocation of dues-checkoff authorization after the employee has resigned membership in the Union, where the terms of the voluntarily executed checkoff authorizations do not clearly and explicitly impose any postresignation dues obligation on the employee and where there is no valid union-security clause in effect.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole, jointly and severally with the Respondent Employer, employee Betty G. McCullah for any dues deductions from her wages for the period following her resignation from union membership, with interest as set forth in the remedy section of this decision.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(b) Post at its facilities in Houston, Texas, copies of the attached notice marked ''Appendix B.'''[13] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent Unions' authorized representative, shall be posted by the Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Post at the same places and under the same conditions as set forth in paragraph B,2,(b), above, as soon as forwarded by the Regional Director, copies of the attached notice marked ''Appendix A.''

(d) Sign and return to the Regional Director sufficient copies of the notice marked ''Appendix B'' for posting by the Respondent Employer at all places where notice to employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Unions have taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations not found herein.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor revocations of dues-checkoff authorizations after the employees have resigned membership in Communications Workers of America, AFL–CIO, and its Local 6222, where the terms of the executed checkoff authorizations do not clearly and explicitly impose any postresignation dues obligation on the employees and where there is no valid union-security clause in effect.

WE WILL NOT deduct, by virtue of dues-checkoff authorizations that do not clearly and explicitly impose any postresignation dues obligation on the employees, union membership dues from the wages of employees who have resigned their union membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole, jointly and severally with Communications Workers of America, AFL–CIO, and its Local 6222 employee Betty G. McCullah for any dues deductions from her wages for the period following her resignation from union membership, with interest.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor any employee's revocation of dues-checkoff authorization after the employee has resigned membership in Communications Workers of America, AFL–CIO, and its Local 6222, where the terms of the executed checkoff authorizations do not clearly and explicitly impose any postresignation dues obligation on the employee and where there is no valid union-security clause in effect.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole employee Betty G. McCullah jointly and severally with Southwestern Bell Telephone Company for any dues deductions from her wages for the period following her resignation from union membership, with interest.

COMMUNICATIONS WORKERS OF AMERICA, AFL–CIO, AND ITS LOCAL 6222

[13] See fn. 12, supra.